ORIGINAL

(S E R V E D)
(April 22, 2002)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

WASHINGTON, D. C.

April 22, 2002

DOCKET NO. 00-02

CROWLEY LINER SERVICES, INC.
AND TRAILER BRIDGE, INC.

v.

PUERTO RICO PORTS AUTHORITY

COMPLAINT DISMISSED; SETTLEMENT APPROVED

The parties have filed a motion asking that the complaint be dismissed with prejudice on the basis of a settlement agreement which they have entered into, for which they seek approval. If the motion is granted, this case, which is now over two years old and has already consumed considerable time and expense relating to a variety of motions and discovery among the parties, would come to an amicable conclusion. I find that the parties' amicable resolution fully comports with the strong policy in the law favoring settlements and saving all parties and the Commission the cost burdens

of lengthy litigation. A brief discussion of the history of this case will place the matter in perspective and illustrate the parties' good sense in seeking and achieving a settlement.

The case began with the tiling of a complaint in January 2000, which was served successfully on February 2, 2000. Complainants, carriers Crowley Liner Services, Inc. (Crowley) and Trailer Bridge, Inc. (Trailer Bridge), alleged that in July 1998 respondent Puerto Rico Ports Authority (PRPA), a marine terminal operator at San Juan, Puerto Rico, changed its method of measuring vessels that pay dockage and other fees at San Juan in such a way as to triple such charges against the two carriers so that the charges were allegedly double those of complainants' competitors who also called at San Juan, The two carriers alleged that PRPA violated sections 1 O(d)(1) and 1 O(d)(4) of the Shipping Act of 1984 (formerly sections 1 O(b)(11) and lO(b)(12)) because the changeover was unreasonable and prejudicial to complainants and furthermore allegedly violated a settlement agreement entered into in a previous Commission complaint case. More specifically, it is alleged that the two carriers had been paying the subject port charges by measuring their vessels under the so-called Standard Measurement System (SMS) whereas PRPA claimed that the vessels should have been measured under the so-called International Tonnage Convention (ITC) method. Because of the unique nature of complainants' vessels, which are triple deck ro-ro barges, measurement under the latter method results in substantial increases in costs to the two carriers. PRPA denied the allegations and filed its own counter-complaint, alleging that the Commission had lost jurisdiction over PRPA to the Surface Transportation Board (STB) and that the two carriers had violated sections 10(a)(1) and IO(d)(l) of the 1984 Act by knowingly and willfully depriving PRPA of its charges under PRPA's schedule of rates, which schedule allegedly required all vessels to be measured under the ITC method. PRPA also alleged that Crowley had violated its lease with PRPA by paying the charges under the SMS method.

The proceeding encountered delays for several reasons. First, counsel conferred on establishing a discovery schedule and on drafting a protective order that would protect sensitive information to be exchanged by the parties in discovery. After such protective order was drafted and issued by this judge, discovery commenced but was interrupted by an election in Puerto Rico, following which new counsel was retained by PRPA and time had to be given such counsel to familiarize counsel with the case and the previous information exchanged. Although settlement was suggested, the time was deemed not yet ripe for such and instead a new schedule was established to allow the parties to file dispositive motions and for complainants to tender a partial evidentiary case-in-chief. Respondent PRPA filed a motion for partial summary judgment alleging that PRPA is not a marine terminal operator subject to Commission jurisdiction but rather a domestic carrier under the STB's jurisdiction and that PRPA was required to measure vessels under the ITC method because of treaty, federal law and regulations administered by the U.S. Coast Guard. Complainants also filed a motion to dismiss PRPA's counter-complaint. On September 20, 2001, I denied PRPA's motion to dismiss and granted complainants' motion to dismiss PRPA's counter-complaint for the most part. See Respondent PRPA's Motion to Dismiss, etc., 29 S.R.R. 394.

Following issuance of the rulings cited, I convened a conference of counsel to discuss the future course of the proceeding and the prospects of settlement. While not giving up its right of appeal of the rulings cited,[1] respondent PRPA agreed that the time was ripe for settlement discussions and the parties were referred to the Commission's Dispute Resolution Specialist and qualified mediator, Mr. Ronald D. Murphy, the Deputy Director of the Commission's Bureau of

[1]PRPA did file an appeal of the rulings cited on October 16, 2001 to which complainants replied, but rulings on the matter became unnecessary in view of the ongoing settlement discussions which were ultimately successful.

Consumer Complaints and Licensing. With the able assistance of Mr. Murphy the parties were able to reach the settlement agreement that is the subject of this ruling and which I now discuss.

General Description of the Settlement Agreement

The parties have attached their settlement agreement to the Joint Motion for Approval of Settlement Agreement. They have asked that the agreement be kept confidential and that the complaint be dismissed with prejudice and without costs or attorney's fees. In previous cases requests to keep settlement agreements confidential have been granted and the settlements have been approved.[2] The full terms of the settlement agreement are available for the Commission to consider, although they will be held confidential pursuant to 46 C.F.R. 502.119. I now briefly describe the settlement agreement in general terms so as to preserve the requested confidentiality.

The settlement agreement consists of a preamble explaining the background to and the nature of the case followed by 10 numbered sections, mostly consisting of representations, covenants, disclaimers of liability, procedural matters concerning Commission approval, and general provisions dealing with applicable laws, construction and confidentiality of the agreement and the binding nature of the agreement. To settle the parties' dispute over PRPA's claims that Crowley and Trailer Bridge had been underpaying under PRPA's tariff or rate schedule and complainants' claim that that schedule was relying on an improper method of vessel measurement that adversely affected complainants' unique barges, the parties arranged a compromise that would allow the two carriers to pay the subject port charges in PRPA's schedules in a manner to the mutual satisfaction of the

[2] See, e.g., *International Association of NVOCCs v. ACL, et al.*, 25 S.R.R. 1607, 1609 (ALJ, F.M.C., Sept. 6, 1991); *Accord Craft Co., Ltd. v. ANERA,* 26 S.R.R. 1385 (ALJ, F.M.C., April 20, 1994); *Amsov Co., Inc. v. Dan-Transport Corp.*, 27 S.R.R. 496, 498 (ALJ, F.M.C., Sept. 7, 1995).

parties. The parties also agreed to refrain from prosecuting or participating in any proceeding against each other relating to the subject claims.

Approvability of the Settlement Agreement

There are now countless cases before the Commission in which settlement agreements devised by litigating parties have been approved and the complaints in such cases have consequently been dismissed. The law and Commission policy strongly favor settlements in lieu of litigation and the Commission is only concerned that the settlement agreement not contravene any law or public policy. The leading modem case on approval of settlement agreements is *Old Ben Coal Company v. Sea-Land Service,* Inc., 21 F.M.C. 506 (1978) [18 S.R.R. 1085]. In *Old Ben,* the Commission described the basic principles governing approval of settlements and the Commission's responsibility as follows:

> It is well settled that the law and Commission policy encourage settlements and engage in every presumption which favors a finding that they are fair, correct, and valid. (Many cases cited.) The Commission's rules of practice similarly encourage settlement as does the Administrative Procedure Act. . . . While following these general principles, the Commission does not merely rubber stamp any proffered settlement, no matter how anxious the parties may be to terminate the litigation. . . . [S]ettlements must not contravene any law or public policy. (2 1 F.M.C. at 5 12.)

Elsewhere, the Commission stated (21 F.M.C. at 513):

> If a proffered settlement does not appear to violate any law or policy and is free of fraud, duress, undue influence, mistake or other defects which might make it unapprovable despite the strong policy of the law encouraging approval of settlements, the settlement will probably pass muster and receive approval.

The instant case provides a good example of why the law so strongly favors amicable resolution by the parties instead of costly litigation. The case is now over two years old and involves difficult issues regarding whether PRPA's method of assessing certain dockage and other port charges relating to complainants' unique barges satisfies the reasonableness test under the Shipping Act as enunciated by the Supreme Court in the case of *Volkswagenwerk AG v. F.M.C., 390* U.S. 261 (1968), which test requires comparing benefits received by the rate payers at marine terminals with the charges that such persons pay as further compared with other payers of port services. The issue would require intensive factual analysis. Should Crowley and Trailer Bridge be unable to prove that PRPA had been violating the *Volkswagenwerk* standard, PRPA might have had to commence suit in a court to recover alleged unpaid terminal charges as provided by section 8(f) of the Shipping Act of 1984, as amended, 46 U.S.C. app. sec. 1707(f). There were further difficult issues that would have had to be litigated, such as the question of whether the two complaining carriers were involved in foreign trades so that the Commission could retain jurisdiction that had otherwise been lost after the repeal of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933. There was also the question as to what effect, if any, other laws applicable to vessel measurement, such as those administered by the U.S. Coast Guard, had on the Shipping Act questions. By entering into the present settlement, the parties have avoided the need to litigate these issues and have enabled themselves to conduct their affairs at San Juan without continued dispute. The parties have compromised and stand to reap benefits from their settlement agreement. It would not be proper for any tribunal to deny the parties the benefits of their settlement agreement under such circumstances. Cf. *Carson v. American Brands, Inc.,* 450 U.S. 79, 89-90 (1981). Moreover, the parties' ability to reach settlement was made possible to some extent because of the Commission's alternative dispute resolution (ADR) program under which the Commission's Dispute Resolution Specialist,

Mr. Ronald D. Murphy, was able to exercise his skills as a mediator and help bring the parties together.

For all the above reasons, the subject settlement agreement should be and hereby is approved and, as requested by the parties, the complaint is dismissed with prejudice and without an award of costs or attorney's fees.

Norman D. Kline

Norman D. Kline
Administrative Law Judges